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8 AMTRUST INTERNATIONAL
9 UNDERWRITERS DAC,

9 Plaintiff,

10 v.

11 180 LIFE SCIENCES CORP.,

12 Defendant.

13 180 LIFE SCIENCES CORP.,

14 Counterclaimant,

15 v.

16 AMTRUST INTERNATIONAL
17 UNDERWRITERS DAC,

18 Counterdefendant.

Case No. [22-cv-03844-BLF](#) (VKD)

**ORDER RE OCTOBER 9, 2024
DISCOVERY DISPUTE**

Re: Dkt. No. 113

19 Plaintiff and counterdefendant AmTrust International Underwriters DAC (“AmTrust”) and
20 defendant and counterclaimant 180 Life Sciences Corp. (“180 Life”) ask the Court to resolve their
21 dispute concerning AmTrust’s requests for production of certain documents from 180 Life. Dkt.
22 No. 113. The Court finds this matter suitable for decision without oral argument. *See* Civil L.R.
23 7-1(b).

24 **I. BACKGROUND**

25 AmTrust served 27 documents requests on 180 Life on September 29, 2023. Dkt. No. 113
26 at 2; Dkt. No. 113-1. 180 Life responded on October 30, 2023, generally representing as to each
27 request that it would produce all non-privileged documents responsive to the request, except where
28 180 Life specifically indicated that it did not have or could not locate any responsive documents,

1 or where it limited its production to “relevant” non-privileged documents. Dkt. No. 113-3.
2 Apparently, the parties “mutually refrained” from actually producing documents until the very end
3 of the fact discovery period. Dkt. No. 113 at 2.

4 On September 16, 2024, five days before the close of fact discovery, 180 Life amended its
5 document request responses, now objecting that several requests “do[] not seek potentially
6 relevant materials” because they are not related to “whether there was ‘any **Claim** alleging in
7 whole or in part any **Wrongful Acts** committed, attempted or allegedly committed or attempted
8 by any **Insured** subsequent [to] the date of such Change In Control,’” and further advising that, in
9 view of this objection, “180 Life has no documents to produce.” *See* Dkt. No. 113-2 (Responses
10 to RFPs 2, 6, 11-14, 16, 19-24).

11 AmTrust argues that 180 Life should not be permitted to rely on these belated objections to
12 limit its production. Dkt. No. 113 at 2-3. 180 Life responds that the claims and defenses at issue
13 are now substantially narrower than when AmTrust first served its document requests and that
14 having to respond to these requests now would impose undue burden on 180 Life. *Id.* at 7-8.

15 II. DISCUSSION

16 The parties agree that this dispute is limited to the following categories of documents:

- 17 1. All communications and documents that discuss insurance coverage exchanged
18 between 180 Life and: (1) its insurance brokers; (2) Dr. Krauss; or (3) Mr. Hornig
19 regarding any Claim tendered for coverage by 180 Life to AmTrust under the
AmTrust Policy.
- 20 2. All communications and documents exchanged between 180 Life and Hudson, 180
21 Life’s D&O carrier Post-Merger, regarding any Claim tendered for coverage by
180 Life to AmTrust under the AmTrust Policy, including but not limited to
22 communications and documents related to the SEC Subpoenas, the SEC
Investigation, and the Dr. Krauss’ Advancement Action.
- 23 3. All communications and documents exchanged with Dr. Krauss and/or Hornig
24 regarding the SEC Investigation (which AmTrust has made clear also means
exchanged in the Advancement Action).
- 25 4. All communications exchanged with the SEC regarding the SEC Investigation.
- 26 5. The “Management Representation Letter” referenced in Dr. Krauss’s SEC
27 interview, and any other documents and communications that reference that
28 document.

1 *Id.* at 4.

2 A party may obtain discovery “regarding any non-privileged matter that is relevant to any
3 party’s claim or defense and proportional to the needs of the case, considering the importance of
4 the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant
5 information, the parties’ resources, the importance of the discovery in resolving the issues, and
6 whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R.
7 Civ. P. 26(b)(1). 180 Life argues that the two summary judgment decisions Judge Freeman has
8 issued in this case, and the fact that the SEC has terminated its investigation of the KBL merger,
9 Dr. Krauss and Mr. Hornig, renders some of the documents AmTrust seeks irrelevant to any claim
10 or defense. AmTrust counters that 180 Life’s reliance on Judge Freeman’s summary judgment
11 orders is misplaced, and that 180 Life ignores its own claims that AmTrust made incorrect
12 coverage determinations in bad faith and AmTrust’s defenses to those claims.

13 The precise scope of 180 Life’s claims against AmTrust is not entirely clear. 180 Life’s
14 counterclaim against AmTrust seeks “damages . . . for the bad faith breach of [AmTrust’s]
15 obligations under the primary D&O policy it sold 180 Life, as well as declaratory relief . . . arising
16 out of [AmTrust’s] contractual obligations . . . to pay, among other things, the costs advanced by
17 180 Life to 180 Life’s former D&Os.” Dkt. No. 14 at 16 ¶ 1. 180 Life’s counterclaim also seeks
18 relief for AmTrust’s denial of coverage for what 180 Life calls the “Counterclaim and Third-Party
19 Complaint in the 180 Action.” *Id.* at 17 ¶ 4. As noted in Judge Freeman’s April 21, 2023 order,
20 180 Life has made coverage demands to AmTrust for expenses advanced to Dr. Krauss and/or Mr.
21 Hornig in connection with several proceedings, and not just for expenses incurred in connection
22 with the SEC investigation. *See* Dkt. No. 59 at 2, 4-5. For this reason, the Court finds
23 unpersuasive 180 Life’s argument that it should be permitted to limit its production of documents
24 only to communications relating to coverage for expenses Dr. Krauss and Mr. Hornig incurred in
25 responding to the SEC subpoenas or for expenses incurred in the Advancement Action,¹ as the

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27 ¹ The Advancement Action refers to the action Dr. Krauss filed against 180 Life in the Delaware
28 Chancery Court to compel 180 Life to advance certain fees and expenses to her. *Krauss v. 180
Life Sciences Corp.*, No. CV 2021-0714-LWW (Del. Ch.).

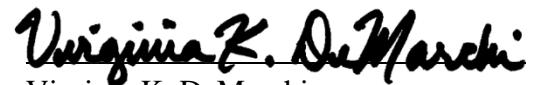
1 claims at issue in this case appear to extend beyond those specific coverage disputes.

2 With respect to termination of the SEC's investigation, 180 Life argues that because the
3 SEC has decided not to bring charges against Dr. Krauss or Mr. Hornig there will never be an
4 allegation of "Wrongful Conduct" against either of them regarding post-merger misconduct. Dkt.
5 No. 113 at 7. The problem with 180 Life's argument is that the SEC's investigation itself
6 constitutes a "Claim" under the AmTrust policy, and 180 Life sought coverage for expenses
7 incurred in responding to that investigation. *See* Dkt. No. 75 at 3 n.1. As Judge Freeman
8 observed in her February 12, 2024 order, the SEC investigation that resulted in the issuance of
9 subpoenas to Dr. Krauss and Mr. Hornig was "something of a black box." *Id.* at 12. However, in
10 holding there was potential coverage for the SEC subpoenas and related Defense Costs, the order
11 observed that AmTrust may be able to show conclusively that the Change of Control Exclusion
12 applies to bar coverage "at a later date, upon a more factually developed record regarding the SEC
13 investigation." *Id.* AmTrust seeks documents in an effort to develop the record on this point.

14 In sum, the five document categories listed above appear reasonably tailored to discovery
15 of non-privileged documents that are relevant to the parties' claims and defenses. The Court is not
16 persuaded that the scope of these document categories would require 180 Life to engage in an
17 unduly burdensome search. The requests are necessarily limited by time and subject matter to the
18 coverage disputes and related claims described in the pleadings. Accordingly, the Court orders
19 180 Life to produce all non-privileged documents responsive to the five categories listed above by
20 **November 15, 2024.**

21 **IT IS SO ORDERED.**

22 Dated: October 28, 2024

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25 Virginia K. DeMarchi
26 United States Magistrate Judge
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